

AMENDED IN SENATE JULY 16, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 121

Introduced by Assembly Members Simitian, Nakano, and Laird

January 15, 2003

An act to add Division 38 (commencing with Section 72400) to the Public Resources Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

AB 121, as amended, Simitian. Large passenger vessels: water quality.

Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (board) is the principal state agency with primary authority over water quality matters. Under the act, the board prescribes waste discharge requirements for the discharge of waste into the waters of the state.

Existing law, which by its own terms will be repealed on January 1, 2004, generally requires a master, operator, or person in charge of a vessel to undertake specified ballast water management and reporting practices.

Federal law prohibits a state from prohibiting vessels from discharging sewage, unless the state applies to, and receives approval from, the United States Environmental Protection Agency. Federal law establishes a system of national marine sanctuaries.

This bill would direct the board to apply to the Administrator of the United States Environmental Protection Agency and any other required federal agencies to authorize the state to prohibit the release of sewage by large passenger vessels into either the marine waters of the state or national marine sanctuaries in the marine waters of the state. The bill would prohibit the release of sewage by large passenger vessels into those waters if the administrator and any other required federal agencies approve the applications, would prohibit the release of oily bilgewater ~~or~~ and ballast water, by large passenger vessels into those waters, and would subject a person who violates the prohibitions to a civil penalty, as specified. *The bill would authorize the release of ballast water for safety reasons, as specified. The bill would require the owner or operator of a large passenger vessel to immediately notify the board of a release of sewage, oily bilgewater, or ballast water, as specified.*

The bill would require the board to request the United States Environmental Protection Agency and any other required agencies to ~~declare those areas outside of the marine waters of the state that flow into the marine sanctuaries to be no discharge zones for sewage, oily bilgewater, and ballast water. The bill would also require the board to request those agencies to~~ prohibit the release of ~~those substances~~ *sewage, oily bilgewater, and ballast water*, by large passenger vessels in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters. The bill would authorize the board to board and inspect a vessel in the marine waters of the state for the purposes of carrying out the bill's provisions. The bill would authorize the board to adopt regulations to carry out the bill's provisions.

The bill would define various related terms and exempt from its provisions vessels that operate in the marine waters of the state solely in innocent passage.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Division 38 (commencing with Section 72400)
- 2 is added to the Public Resources Code, to read:
- 3



DIVISION 38. LARGE PASSENGER VESSELS

CHAPTER 1. DEFINITIONS

72400. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) “Board” means the State Water Resources Control Board.

(c) “Large passenger vessel” or “vessel” means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(d) “Marine waters of the state” means “coastal waters” as defined in Section 13181 of the Water Code.

(e) “~~Marine sanctuaries~~—sanctuary” means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, ~~and~~ or Monterey Bay National Marine Sanctuary.

(f) “Oil” has the meaning set forth in Section 8750.

(g) “Oily bilgewater” includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) “Operator” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(i) “Owner” has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(j) “Release” means discharging or disposing of wastes into the environment.

(k) “Sewage” has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, and also includes material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

CHAPTER 2. PROHIBITED RELEASES

72415. (a) The Legislature finds and declares that the protection and enhancement of the quality of marine waters of the state requires that the release of untreated and treated sewage from large passenger vessels into the marine waters of the state should be prohibited.

(b) The board shall apply to the Administrator of the United States Environmental Protection Agency, pursuant to subsection (f) of Section 1322 of Title 33 of the United States Code and Section 140.4 of Title 40 of the Code of Federal Regulations, and any other required federal agencies, as determined by the board, to authorize the state to prohibit the release of untreated and treated sewage from large passenger vessels into the marine waters of the state.

72417. If the Administrator of the United States Environmental Protection Agency, and any other required federal agencies, approve an application made pursuant to subdivision (b) of Section 72415, an owner or operator of a large passenger vessel may not release, or permit anyone to release, any sewage, untreated or treated, from the vessel into the marine waters of the state.

72419. (a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state requires that the release of oily bilgewater from large passenger vessels into the marine waters of the state should be prohibited.

(b) An owner or operator of a large passenger vessel may not release, or permit anyone to release, any oily bilgewater from the vessel into the marine waters of the state.

72421. (a) The Legislature finds and declares that the protection and enhancement of the quality of marine waters of the state requires that the release of ballast water from large passenger vessels into the marine waters of the state should be prohibited.

(b) (1) An owner or operator of a large passenger vessel may not release, or permit anyone to release, ballast water from the vessel into the marine waters of the state.

(2) (A) *This subdivision does not require an owner or operator to refrain from releasing ballast water from the vessel, if the owner or operator determines that refraining from releasing ballast*

1 *water would threaten the safety of the vessel, its crew, or its*
2 *passengers, because of adverse weather, vessel design limitations,*
3 *equipment failure, or any other extraordinary conditions.*

4 *(B) If a determination described in subparagraph (A) is made,*
5 *the owner or operator shall take all feasible measures, based on*
6 *the best available technologies economically achievable, that do*
7 *not compromise the safety of the vessel, to minimize the release of*
8 *ballast water into the marine waters of the state.*

9 *(C) Nothing in this section relieves the owner or operator of*
10 *responsibility for ensuring the safety and stability of the vessel and*
11 *the safety of the crew and passengers, or of any other*
12 *responsibility.*

13 72423. (a) The Legislature finds and declares that the
14 protection and enhancement of the quality of marine sanctuaries
15 requires that the release of untreated and treated sewage from large
16 passenger vessels into marine sanctuaries should be prohibited.

17 (b) The board shall apply to the Administrator of the United
18 States Environmental Protection Agency, pursuant to subsection
19 (f) of Section 1322 of Title 33 of the United States Code and
20 Section 140.4 of Title 40 of the Code of Federal Regulations, and
21 any other required federal agencies, as determined by the board,
22 to authorize the state to prohibit the release of untreated and treated
23 sewage from large passenger vessels into marine sanctuaries.

24 72425. If the Administrator of the United States
25 Environmental Protection Agency, and any other required federal
26 agencies, approve an application made pursuant to subdivision (b)
27 of Section 72423, an owner or operator of a large passenger vessel
28 may not release, or permit anyone to release, sewage, untreated or
29 treated, from the vessel into ~~marine sanctuaries~~ *a marine*
30 *sanctuary.*

31 72427. (a) The Legislature finds and declares that the
32 protection and enhancement of the quality of marine sanctuaries
33 requires that the release of oily bilgewater from large passenger
34 vessels into marine sanctuaries should be prohibited.

35 (b) An owner or operator of a large passenger vessel may not
36 release, or permit anyone to release, oily bilgewater from the
37 vessel into ~~marine sanctuaries~~ *a marine sanctuary.*

38 72429. (a) The Legislature finds and declares that the
39 protection and enhancement of the quality of marine sanctuaries

1 requires that the release of ballast water from large passenger
2 vessels into marine sanctuaries should be prohibited.

3 (b) (1) An owner or operator of a large passenger vessel may
4 not release, or permit anyone to release, ballast water from the
5 vessel into ~~marine sanctuaries~~ a marine sanctuary.

6 (2) (A) *This subdivision does not require an owner or operator*
7 *to refrain from releasing ballast water from the vessel, if the owner*
8 *or operator determines that refraining from releasing ballast*
9 *water would threaten the safety of the vessel, its crew, or its*
10 *passengers, because of adverse weather, vessel design limitations,*
11 *equipment failure, or any other extraordinary conditions.*

12 (B) *If a determination described in subparagraph (A) is made,*
13 *the owner or operator shall take all feasible measures, based on*
14 *the best available technologies economically achievable, that do*
15 *not compromise the safety of the vessel, to minimize the release of*
16 *ballast water into a marine sanctuary.*

17 (C) *Nothing in this section relieves the owner or operator of*
18 *responsibility for ensuring the safety and stability of the vessel and*
19 *the safety of the crew and passengers, or of any other*
20 *responsibility.*

21 72430. *If a large passenger vessel releases sewage, oily*
22 *bilgewater, or ballast water into the marine waters of the state or*
23 *a marine sanctuary, the owner or operator shall immediately, but*
24 *no later than 24 hours after the release, notify the board of the*
25 *release. The owner or operator shall include all of the following*
26 *information in the notification:*

27 (a) *Date of the release.*

28 (b) *Time of the release.*

29 (c) *Location of the release.*

30 (d) *Volume of the release.*

31 (e) *Source of the release.*

32 (f) *Remedial actions taken to prevent future releases.*

33 (g) *If the release was a release of ballast water, whether the*
34 *release was made under conditions described in paragraph (2) of*
35 *subdivision (b) of Section 72421 or paragraph (2) of subdivision*
36 *(b) of Section 72429. .*

37
38 CHAPTER 3. PENALTIES
39

40 72430.—

1 72435. (a) A person who violates Section 72417, 72419,
2 72421, 72425, 72427, or 72429 is subject to a civil penalty of not
3 more than twenty-five thousand dollars (\$25,000) for each
4 violation.

5 (b) The civil penalty imposed for each separate violation
6 pursuant to this section is separate from, and in addition to, any
7 other civil penalty imposed for a separate violation pursuant to this
8 section or any other provision of law.

9 (c) In determining the amount of a civil penalty imposed
10 pursuant to this section, the court shall take into consideration all
11 relevant circumstances, including, but not limited to, the nature,
12 circumstance, extent, and gravity of the violation. In making this
13 determination, the court shall consider the degree of toxicity and
14 volume of the release, the extent of harm caused by the violation,
15 whether the effects of the violation may be reversed or mitigated,
16 and with respect to the defendant, the ability to pay, the effect of
17 a civil penalty on the ability to continue in business, all voluntary
18 cleanup efforts undertaken, the prior history of violations, the
19 gravity of the behavior, the economic benefit, if any, resulting
20 from the violation, and all other matters the court determines
21 justice may require.

22 (d) A civil action brought under this section may only be
23 brought in accordance with this subdivision. That civil action may
24 be brought by the Attorney General upon complaint by the
25 Department of Fish and Game or the appropriate California
26 regional water quality control board, or by a district attorney or
27 city attorney. If a district attorney or city attorney brings an action
28 under this section, the action shall be in the name of the people of
29 the State of California. An action relating to the same violation
30 may be joined or consolidated.

31
32 CHAPTER 4. MISCELLANEOUS
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34 ~~72440. The board shall request the United States~~
35 ~~Environmental Protection Agency, and any other required~~
36 ~~agencies, as determined by the board, to declare those areas outside~~
37 ~~of the marine waters of the state that flow into the marine~~
38 ~~sanctuaries to be no discharge zones for sewage, oily bilgewater,~~
39 ~~and ballast water.~~

1 72441. The board shall request the United States
2 Environmental Protection Agency, and any other required
3 agencies, as determined by the board, to prohibit the release of
4 sewage, oily bilgewater, and ballast water, by large passenger
5 vessels, in all of the waters that are in the Channel Islands National
6 Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf
7 of the Farallones National Marine Sanctuary, and Monterey Bay
8 National Marine Sanctuary, that are not in the state waters.

9 72442. The board may board and inspect a vessel in the
10 marine waters of the state for the purposes of carrying out this
11 division.

12 72444. (a) This division does not apply to a large passenger
13 vessel that operates in the marine waters of the state solely in
14 innocent passage.

15 (b) For the purposes of this section, a vessel is engaged in
16 innocent passage if its operation in state waters would constitute
17 innocent passage under either the Convention on the Territorial
18 Sea and Contiguous Zone, dated April 29, 1958, or the United
19 Nations Convention on the Law of the Sea, dated December 10,
20 1982.

21 72446. The board may adopt regulations to carry out this
22 division.

